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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,839	01/24/2001	Philip D. Mooney	129250-001021/US	2205
32498	7590	07/10/2008	EXAMINER	
CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC			NGUYEN, TU X	
P.O. BOX 1995			ART UNIT	PAPER NUMBER
VIENNA, VA 22183			2618	
			MAIL DATE	DELIVERY MODE
			07/10/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte: PHILIP D. MOONEY, JOSEPH M. CANNON  
AND JAMES A. JOHANSON

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Application No. 09/767,839  
Date Mailed: July 9, 2008

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received at the Board of Patent Appeals and Interferences on March 28, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matter requiring attention prior to docketing is identified below.

EXAMINER'S ANSWER

Evidence Relied Upon

On October 16, 2007 an Examiner's Answer was mailed. The Evidence Relied Upon section of the Examiner's Answer is defective. The Examiner relied upon the Lowe (US Patent 6,298,218) reference in the statement of the grounds of rejection for claims 18 and 49-50 and therefore it must be included in the "Evidence Relied Upon" section.

In accordance with MPEP § 1207.02, the "Evidence Relied Upon" should include:

A listing of the \*\*>evidence< relied on >(e.g., patents, publications, admitted prior art)<, and, in the case of nonpatent references, the relevant page or pages.

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Correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) issue and mail a PTOL-90 correcting the Evidence Relied Upon section as noted above; and
- 2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: /Krista Zele/  
Krista Zele  
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KZ/tsj

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